

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)	3:19-CR-112-K-3
Government,)	
)	
VS.)	DALLAS, TEXAS
)	
HARLEY E. BARNES III,)	
Defendant.)	March 1, 2023

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE ED KINKEADE
UNITED STATES DISTRICT JUDGE

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24 Proceedings reported by mechanical stenography and
25 transcript produced by computer.

1 SENTENCING HEARING - MARCH 1, 2023

2 P R O C E E D I N G S

3 THE COURT: Case of United States of America versus
4 Harley Barnes, Cause Number 3:19-CR-112-K.

5 Mr. Christopher Fenton, who is formerly a Washington,
6 D.C., now down here permanently, apparently.

7 MR. KNELLER: Not Mr. Fenton, Your Honor.

8 MS. WALTERS: But Mr. Kneller.

9 MR. KNELLER: Mr. Kneller.

10 THE COURT: I meant Kneller.

11 MS. WALTERS: Yes.

12 THE COURT: I called you Fenton, didn't I? Sorry.

13 MR. KNELLER: That's all right.

14 THE COURT: And Ms. Walters, who does live here.

15 MS. WALTERS: Yes.

16 And also joining us today, Your Honor, is Beverly
17 Chapman of our office.

18 THE COURT: Ms. Chapman, good to have you here.

19 MS. CHAPMAN: Good morning, Your Honor.

20 THE COURT: Is this your first time to work on one of
21 these?

22 MS. CHAPMAN: It is not.

23 (Discussion off the record)

24 THE COURT: And, Mr. Kneller, sorry I called you
25 Mr. Fenton.

1 MR. KNELLER: Not a problem, Your Honor.

2 THE COURT: I won't do it again.

3 Okay. All right. And y'all are ready.

4 And then representing Mr. Barnes, Mr. Skipper, you're
5 here and you're ready?

6 MR. SKIPPER: Good morning.

7 THE COURT: Good to see you, Mr. Skipper.

8 MR. SKIPPER: Good to see you.

9 And then I'm here along with Mr. Keith Gore and John
10 Gussio, Your Honor.

11 THE COURT: Oh, good to see y'all.

12 MR. GORE: Good morning.

13 MR. GUSSIO: Good morning.

14 THE COURT: All right. Appreciate y'all helping
15 Mr. Skipper.

16 Mr. Skipper, how many years ago did you clerk down
17 here?

18 MR. SKIPPER: 2003. Twenty. Twenty years.

19 THE COURT: That's been a few years ago.

20 MR. SKIPPER: Been a few years. It was a lot of fun.

21 THE COURT: We're glad to have you back.

22 MR. SKIPPER: Glad to be back.

23 THE COURT: All right. Mr. Barnes?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: On June 7, 2000 -- if you can't stand --

1 is there something wrong with you physically?

2 THE DEFENDANT: I don't have any strength in my left
3 side.

4 THE COURT: You what? I'm sorry?

5 THE DEFENDANT: I don't have any strength in my left
6 side.

7 THE COURT: Okay. Well, if you can't stand, you can
8 sit down during this if it --

9 THE DEFENDANT: I can -- I can stand up okay.
10 Just --

11 THE COURT: Okay. I'm not going to ask you to run a
12 mile or anything. You just stand there, okay?

13 THE DEFENDANT: Thank you.

14 THE COURT: All right. You pled guilty before United
15 States Magistrate Judge Rebecca Rutherford to Counts One
16 through Twenty-One and Twenty-Three of a 23-count superseding
17 indictment to conspiracy to commit mail and wire fraud in Count
18 One; and Counts Two through Eleven, mail fraud; and Counts
19 Twelve through Twenty-One, wire fraud. Excuse me. And Count
20 Twenty-Three, money laundering and aiding and abetting.

21 And I accepted your guilty plea on June 22, 2022.

22 And I will dismiss the original indictment as to you
23 today.

24 We have an offense level 43, criminal history
25 category I, a guideline range of a long time in Counts One,

1 Twenty-One, and Twenty-Three of 5,160 months. A statutory --
2 that's it. Okay.

3 And let me ask you this. Have y'all reached any kind
4 of agreement on the restitution, Mr. Skipper?

5 MR. SKIPPER: Your Honor, we -- yes, we -- as far
6 as --

7 THE COURT: Is that the \$10 million?

8 MR. SKIPPER: The amount is the \$10 million.

9 THE COURT: Okay.

10 MR. SKIPPER: It's a bit reduced more than the
11 others, Your Honor. Yes, sir.

12 THE COURT: Okay. And so restitution in this case --
13 and both sides have agreed -- is \$10,168,575.21.

14 Is that correct, Mr. Skipper?

15 MR. SKIPPER: Yes, Your Honor.

16 And this morning we did -- I did give to Ms. Chapman
17 the document to go ahead and expedite that any further moneys
18 be paid directly and not go through the forfeiture -- have no
19 delay.

20 THE COURT: Okay.

21 MR. SKIPPER: I don't know what that document is
22 titled, but Mr. Barnes certainly agreed to do that.

23 MS. CHAPMAN: Yes, Your Honor. The items listed in
24 the indictment as subject to forfeiture, that Mr. Barnes agreed
25 was subject to forfeiture in his plea agreement, we are instead

1 going to directly apply those funds to restitution.

2 Mr. Barnes has agreed to that. And Mr. Comu also
3 separately agreed to waive his interest in those funds.

4 So we intend to file that motion at some point this
5 week with the Court.

6 THE COURT: Okay. And these were all cash accounts,
7 I'm assuming?

8 MS. CHAPMAN: Yes, Your Honor.

9 THE COURT: Okay.

10 MS. CHAPMAN: In the name of -- there are various
11 businesses that were --

12 THE COURT: How much money is it?

13 MS. CHAPMAN: About \$240,000.00.

14 THE COURT: Well, good. That's -- at least that's a
15 start. All right.

16 MR. SKIPPER: And also, Your Honor, just -- just a
17 point of clarification, Mr. Barnes also had submitted already
18 through Mr. Gore \$36,000.00 to the registry of the court before
19 today.

20 THE COURT: Okay. And the Government agrees to that?

21 MS. CHAPMAN: Yes, Your Honor.

22 THE COURT: All right. Great. So whatever that
23 totals up. We've got some restitution paid.

24 Now, you've got a number of objections and
25 clarifications. Do you want to go over those, or how do you

1 want to do it?

2 MR. SKIPPER: Your Honor, I do not want to go back
3 over those.

4 THE COURT: All right.

5 MR. SKIPPER: I've discussed them with Mr. Barnes.
6 He's familiar with them. The majority are clarifications which
7 have no impact on the guidelines. The other two this Court has
8 already ruled on with Mr. Comu. And just to expedite this, we
9 would just address, if that's okay with the Court.

10 THE COURT: Oh, sure.

11 MR. SKIPPER: And then we could just move to the
12 appropriate sentence.

13 I don't have any family here. I did submit four
14 letters on behalf of Mr. Barnes.

15 THE COURT: You did, and I have those. I appreciate
16 that.

17 MR. SKIPPER: And I know --

18 THE COURT: So I don't remember how I ruled in that
19 other guy's case.

20 MR. SKIPPER: They were overruled. I mean, they were
21 obviously seriously considered by the Court.

22 THE COURT: Then I -- and on the clarifications, I'm
23 assuming the Government doesn't have any objection to those
24 clarifications?

25 MR. KNELLER: No objections to those clarifications,

1 Your Honor.

2 THE COURT: Okay. Then I'll grant those, but
3 otherwise I overrule your objections.

4 Okay. So I'm ready to hear -- I do accept, then,
5 with those clarifications the findings of the Probation
6 Department as the findings of the Court.

7 And you've got a -- the Government has got a
8 sentencing memorandum, and the Defendant has a sentencing
9 memorandum.

10 The Government is wanting me to assess punishment
11 between 108 and 120 months. And you're wanting me to give him
12 no more than 60 months.

13 MR. SKIPPER: Yes, sir, Your Honor, that's our
14 preference, no more than 72 months. That's what Mr. Price got.
15 We believe that 60 months is fair.

16 THE COURT: And you think Mr. Price and he are
17 similar?

18 MR. SKIPPER: I think Mr. Price is more culpable than
19 Mr. Barnes.

20 THE COURT: All right.

21 MR. SKIPPER: That's what this boils down to, is how
22 similarly situated they actually are. The Government would say
23 he's a lot more than we believe.

24 THE COURT: You agree? No?

25 MR. KNELLER: We do not agree with that, Your Honor.

1 We think that Mr. Barnes is more culpable than Mr. Price was.

2 THE COURT: Okay. All right. So that's what we're
3 going to spend our time deciding that, so get right to it.
4 Don't waste time on all the other stuff, okay?

5 All right. I'm ready to hear -- Mr. Barnes?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You agree to that restitution we've been
8 talking about?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. And, Mr. Skipper, I'm ready to
11 hear both argument and anything in mitigation. And if
12 Mr. Barnes wants to say anything, I'm glad to hear from him,
13 but he doesn't have to.

14 MR. SKIPPER: If it's okay if he allocutes first, and
15 then I'll just address the Court, Your Honor.

16 THE COURT: That would be great.

17 Do you want to allocute from there, sir?

18 THE DEFENDANT: Yes, Your Honor, if that's okay.

19 THE COURT: Do you want to do it seated?

20 THE DEFENDANT: Standing is fine, sir.

21 THE COURT: Okay. The microphone needs to be a
22 little closer to you so we can hear you, and we'll go from
23 there, okay?

24 THE DEFENDANT: Thank you.

25 MR. SKIPPER: Go ahead.

1 THE COURT: I'm ready.

2 THE DEFENDANT: I pled guilty because I am guilty. I
3 let down my ethics and my morals, and I didn't follow those. I
4 let down my faith, my God.

5 when I joined the company, I was arrogant and thought
6 I can change this and get it fixed, and I didn't. I kept
7 putting it off, kept putting it off, and finally when I did it
8 was way too late, so I have nobody to blame but myself.

9 THE COURT: Where are you from?

10 THE DEFENDANT: I grew up in Missouri and went to
11 school in Mississippi.

12 THE COURT: Where in Missouri?

13 THE DEFENDANT: Southeast, Sikeston.

14 THE COURT: Springfield? Is Springfield near there?
15 No?

16 THE DEFENDANT: It's down south, but it's on --
17 Springfield is on the west side. My hometown is on the east
18 side.

19 THE COURT: Oh, so you're over near Bentonville in
20 Arkansas?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. All right. How did you get
23 involved in all this? Have you always been a salesman?

24 THE DEFENDANT: No, I've never been a salesman. I'm
25 a finance person. I've been -- I got involved because I was

1 invited by Mr. Comu to come and help with some things they were
2 doing on the finance side, and I said I would. And he wanted
3 me to become his CFO, so I agreed to it. And then after I
4 found out what they were doing with the 50-percent commissions
5 instead of 10 percent --

6 THE COURT: You should have left right then.

7 THE DEFENDANT: I should have left right then, and I
8 didn't. And it just continued to manifest and --

9 THE COURT: Have you had real jobs in the past --

10 THE DEFENDANT: Yes, sir.

11 THE COURT: -- that were legitimate?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: What kind of things have you done?

14 THE DEFENDANT: Well, right out of college I was a
15 national bank examiner. I worked for the U.S. Treasury
16 Department.

17 THE COURT: For which department?

18 THE DEFENDANT: The Treasury Department.

19 THE COURT: Oh, you did? Okay.

20 THE DEFENDANT: The OCC.

21 THE COURT: I had a good friend that was a bank
22 examiner. I'm assuming you have a lot of different stories to
23 tell.

24 THE DEFENDANT: I do, yes, sir.

25 THE COURT: That was a good job, not a well-paying

1 job, correct?

2 THE DEFENDANT: It was a lot of travel and low-paying
3 job, but I enjoyed it. I learned a lot.

4 THE COURT: Okay.

5 THE DEFENDANT: And I got hired to come down to
6 Houston, Texas, for City Bank, if you remember that old bank.

7 THE COURT: Yes, sir.

8 THE DEFENDANT: Hired me to go around to all their
9 banks and be an examiner, review their loans and policies and
10 procedures. And I did that for three years. And then I became
11 a loan officer with First City Dallas and moved up here and
12 worked in the main bank here with Mr. Strauss.

13 Then I was a -- I was hired --

14 THE COURT: Strauss that was later in the
15 administration?

16 THE DEFENDANT: Ted Strauss.

17 THE COURT: Ted Strauss.

18 THE DEFENDANT: The --

19 THE COURT: Oh, that's the brother. Okay.

20 THE DEFENDANT: It's the husband of the mayor.

21 THE COURT: Yes.

22 THE DEFENDANT: The -- I got hired away by one of my
23 customers up in Plano called DSC Communications, and I went up
24 there and became vice president of finance and did that for 13
25 years. It was a public company.

1 After we sold it to Alcatel, I moved to another
2 technology company called R.F. Monolithics. It was started by
3 several engineers from TI. And I was vice president and CFO of
4 that company.

5 THE COURT: What happened there?

6 THE DEFENDANT: We were a public company, and we sold
7 to --

8 THE COURT: To who?

9 THE DEFENDANT: A Japanese firm --

10 THE COURT: Okay.

11 THE DEFENDANT: -- called -- I can't remember it now.

12 THE COURT: That's okay.

13 And then did you make money out of any of these
14 sales?

15 THE DEFENDANT: Not really.

16 THE COURT: You didn't have a piece of the pie?

17 THE DEFENDANT: Not really. A small -- a small
18 piece. And then I either held onto it too long or sold it and
19 bought something that wasn't as preferable. So I never really
20 held onto any money that I created for the companies that I
21 worked for.

22 THE COURT: What does that mean? You lived above
23 your means?

24 THE DEFENDANT: No. I got greedy, similar to I did
25 in this situation. You know, I either held it too long or --

1 THE COURT: What do you mean, held it too long?

2 THE DEFENDANT: Held the stock too long. I'm sorry.

3 Held the stock too long.

4 THE COURT: And it went south?

5 THE DEFENDANT: And it went south before I got to

6 sell it.

7 THE COURT: Okay. Do you have a family?

8 THE DEFENDANT: Yes, sir. I did. I do.

9 THE COURT: Which is it, "I did" or "I do"?

10 THE DEFENDANT: Both.

11 THE COURT: What does that mean?

12 THE DEFENDANT: I have a 93-year-old mother, and I
13 have a 70-year-old sister. And I have two sons -- I mean one
14 son, one daughter. My son is 35 -- 30. And my daughter is 26.

15 THE COURT: Are any of them in criminal activity like
16 you?

17 THE DEFENDANT: No, they're not.

18 THE COURT: Are they aware of you being in trouble?

19 THE DEFENDANT: They are. They've disowned me. I
20 haven't been able to contact them or --

21 THE COURT: Your kids haven't come to visit you?

22 THE DEFENDANT: No. No, Your Honor.

23 I had -- I was married for 35 years and ruined that
24 relationship.

25 THE COURT: Before this case or during?

1 THE DEFENDANT: Because of it, yes.

2 THE COURT: Where's she?

3 THE DEFENDANT: She's in Plano.

4 THE COURT: Was it worth it?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: What else should I know about you?

7 THE DEFENDANT: I feel awful that I'm here and I went
8 through all this, but to me it doesn't really matter; it's the
9 people that I hurt. I'm sorry that I did, and I want to make
10 sure that I can repay people if I can.

11 THE COURT: Okay. Rarely do people's lives go off
12 the rail at just this juncture. Did yours go off sometime
13 earlier? You started drifting into these kind of, you know,
14 activities that first started out just not being quite
15 appropriate, and then you just kept getting worse and worse?

16 THE DEFENDANT: No, Your Honor. This is the first
17 time ever being involved in something like this.

18 THE COURT: Okay. So everybody there obviously is
19 guilty of something, right? All of you?

20 THE DEFENDANT: As part of a conspiracy, yes.

21 THE COURT: Okay. And as far as you, where do you
22 see yourself in the scheme of things? You were the money guy.

23 THE DEFENDANT: I was the money guy, so I was writing
24 the checks.

25 THE COURT: So there's nothing you didn't know about.

1 THE DEFENDANT: Nothing I didn't know about, but I
2 didn't -- I didn't make any money from the commissions or
3 anything. I just was a salaried employee just like everybody
4 else was.

5 THE COURT: You just helped some outlaws be bigger
6 outlaws?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Okay. Okay. I kind of understand that.

9 THE DEFENDANT: I've been in county jail for three
10 years now or over three years.

11 THE COURT: How was that?

12 THE DEFENDANT: When I was originally arrested, I was
13 accused of getting back and doing it again with other
14 investors, which is not true, but I got accused of that.

15 (Counsel consults with Defendant)

16 THE DEFENDANT: Violated pretrial release.

17 (Counsel consults with Defendant)

18 THE COURT: But you got your pretrial release
19 violated.

20 THE DEFENDANT: Yeah, and I've been in jail ever
21 since.

22 THE COURT: I understand. You're just telling me
23 that you didn't do anything wrong and they just yanked your
24 freedom?

25 (Counsel consults with Defendant)

1 THE DEFENDANT: Yes.

2 (Counsel consults with Defendant)

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Some other judge made a mistake?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. The Government is going to tell me
7 a bunch of things here in a minute that if that -- so if that's
8 not true, you better tell me right now. I am the guy who's
9 going to make --

10 (Counsel consults with Defendant)

11 THE DEFENDANT: I violated the pretrial release.

12 THE COURT: Yes.

13 THE DEFENDANT: I --

14 (Counsel consults with Defendant)

15 THE DEFENDANT: I did -- I called people that I
16 shouldn't have, other investors, other --

17 THE COURT: So you can't really -- you're having a
18 hard time in coming completely clean? That happens all the
19 time.

20 THE DEFENDANT: Yeah, I was just trying to help
21 people, but, anyway, that's not the way it was provided by the
22 prosecution.

23 THE COURT: What in the world are you doing calling
24 anybody while you're in jail about this scam?

25 THE DEFENDANT: I wasn't in jail at the time.

1 THE COURT: Oh, that's right. You were at home.

2 THE DEFENDANT: I was on pretrial release.

3 THE COURT: Okay. So --

4 THE DEFENDANT: People were calling me asking what's
5 happening, what do I need to do, what --

6 THE COURT: So you -- you gave them certain advice or
7 told them this or that, right?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: Did you call your lawyer and say, "Man, I
10 wonder what I ought to do now"?

11 THE DEFENDANT: Actually, my lawyer that I had at the
12 time for the company was putting together --

13 THE COURT: I'm talking about the lawyer -- your
14 criminal defense lawyer.

15 THE DEFENDANT: No, I did not.

16 THE COURT: So you're not just an accountant. You're
17 also kind of part-time lawyer for yourself. You don't need any
18 advice?

19 THE DEFENDANT: No, sir, that's not correct. I do
20 need advice.

21 THE COURT: Yeah, you do. You need a lot of it.

22 I'm just telling you, it doesn't help for you to kind
23 of beat around the bush, "I didn't do anything wrong, and I got
24 my pretrial release revoked."

25 what has it been like in the jail since you got

1 revoked?

2 THE DEFENDANT: It's been miserable.

3 THE COURT: What's your typical day?

4 THE DEFENDANT: Get up, read the Bible, watch TV.

5 THE COURT: You don't get to exercise?

6 THE DEFENDANT: No. I really can't.

7 THE COURT: Okay. I wouldn't say those are gourmet
8 meals you're eating either, are they?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Right.

11 And you haven't made a good bunch of friends there
12 that you would ever want to spend a weekend with or go into
13 business with?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Right.

16 Okay. Anything else you want to tell me about that?
17 Because they're going to blast you here in just a minute. If
18 you've got anything you want to tell me, you better tell it
19 right now.

20 THE DEFENDANT: Yeah. My mother is 93 years old, and
21 I would like to go home and be with her.

22 THE COURT: Yeah, everybody wants that. I'm just
23 talking about your culpability and the bad stuff you did. This
24 is your chance to come clean with everything.

25 THE DEFENDANT: I was guilty. I am guilty. I did

1 what everybody says I did in that PSI or whatever was put
2 together.

3 THE COURT: PSR. Yes, sir. Yes, sir.

4 Okay. All right. Anything else?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: All right. Mr. Skipper?

7 MR. SKIPPER: Your Honor, is that okay if I approach
8 the lectern?

9 THE COURT: Yeah, I want you to.

10 MR. SKIPPER: It's a little bit higher.

11 THE COURT: No, it will be -- I'm glad to know you
12 don't have to have glasses.

13 MR. SKIPPER: Your Honor, the Government is asking
14 the Court to impose a sentence of between 108 and 120 months as
15 for Mr. Barnes. And as stated, they think that he is -- he,
16 being Mr. Barnes, is more culpable than --

17 THE COURT: Mr. Price?

18 MR. SKIPPER: -- Mr. Price, yes, sir.

19 THE COURT: Well, the difference is, they want at
20 least about three more years than what the most you want me to
21 give him, right?

22 MR. SKIPPER: That's true, Your Honor.

23 THE COURT: Okay.

24 MR. SKIPPER: But at the top end, just to -- if I
25 could start at the end --

1 THE DEFENDANT: Do.

2 MR. SKIPPER: -- and unravel the onion.

3 THE COURT: Do.

4 MR. SKIPPER: In light of what they know now -- this
5 is what I would want to ask the Court to dial in on. After
6 C.J. Comu is sentenced, after Mervyn Price is sentenced, and we
7 have all that discussion about everything that I'm not going to
8 rehash here today, they have filed a pleading in light of what
9 they know about C.J. Comu being sanctioned by the SEC, being
10 sanctioned by the Wisconsin State Board of Securities, filing a
11 bankruptcy, having through their own words 30 years of fraud in
12 his life, the Government is okay if you were to sentence Buddy
13 Barnes to the same amount of time as C.J. Comu. That's what's
14 in their pleading, up to ten years. They would sleep okay with
15 Buddy Barnes getting ten years. On the bottom end it's nine.

16 And so if you say, okay, here's Mervyn with six,
17 here's C.J. with ten, you split them, at least that's eight at
18 the top end. They want nine to ten. Why? Because they're
19 frustrated because of what he engaged in while he was on
20 pretrial release. At least that's what I would be frustrated
21 in, but it --

22 THE COURT: Well, it isn't just that. I'm sure the
23 Government didn't agree with my sentence. I don't think they
24 agreed with -- you know, they wanted more. They're going to
25 say in a minute, "we actually wanted more than 120 months on

1 Comu." That's what they're going to say, I'm sure.

2 MR. SKIPPER: I don't know if they would say that. I
3 mean --

4 THE COURT: well, they're going to think it.

5 MR. SKIPPER: well, sure, but that's already in the
6 past. And so I'm just saying when you have your new metric,
7 that's all I'm saying, Your Honor, perhaps it should be dialed
8 back a little bit. And so now we're focused on the distinction
9 between Mervyn Price and Buddy Barnes.

10 And Mervyn Price, he was one of the initial spokes on
11 the chuck wagon that Comu is up there swatting the horses on.
12 He's one -- he is the initial guy. He is the initial partner.
13 He is the initial money man. He's involved in getting the
14 "boots on the ground" guys, Kadish and Green, to pump up the
15 money. They've got to get those capital investors.

16 The only way Kadish and Green are going to do it,
17 according to Comu and Price, is to get 40 -- 50 percent on the
18 back end, which is clearly why we're here today. That was a
19 lie. It was a crime.

20 Buddy comes in later when Mervyn Price has this
21 falling-out with C.J. Comu in September of 2016, as far as on
22 paper with Earthwater, and he does those things. But even --
23 there's a statement from this guy, Don Frey, F-R-E-Y, when he's
24 interviewed in March of 2020. And Frey says, "Harley Barnes
25 and Frey met about two years ago in 2017 or 2018 when Comu

1 hired him as EarthWater's CFO. Frey met Mervyn Price about
2 five years ago. Price was Comu's partner in finding companies
3 to invest in to promote or companies for sale. Comu and Price
4 were always together. Price was introduced as Comu's partner.
5 Comu called Price 'Big Bird.' They had offices together."

6 So there are distinguishing characteristics between
7 Price and Mr. Barnes. Restitution amount is lower. The number
8 of victims is lower. The loss amount with regard to that
9 repayment is lower.

10 And interestingly enough, it came out on Mr. Price's
11 sentencing, which I thought was interesting, that he had
12 written this plea of guilt to himself in an email in the spring
13 of 2018 after he had already represented to the Government and
14 to you that he had come clean and realized the sins of his
15 involvement, and writes out this email, which the Government
16 had. And it was basically a roadmap in the prosecution of this
17 entire case.

18 After that time, he off-loaded all of his personal
19 stock to the tune of \$183,000.00. As you know, he wasn't a
20 registered broker, so he had Russ Filippo do that to get 30
21 percent on the back end.

22 Buddy never sold any of his stock. He never sold it.
23 He never tried to. He was in on the company. He wrote all the
24 checks. He did all those things. But there are disparities
25 significant between Buddy and Mervyn Price.

1 Even though Mervyn presumably complied with his
2 conditions of release, there are things that he did and more
3 significant structure he was involved in on the front end.
4 Buddy joined later. That's why, again, his numbers are lower.
5 And he was another spoke that just kept it going. But he
6 wasn't involved in the initial part of that master plan, so to
7 speak.

8 And so I think in determining whether or not to go
9 all the way up to where they want to go, meaning the
10 Government, nine to ten years, we would ask that they -- Your
11 Honor, you consider those things and the other things I brought
12 up in the motion on his personal background, which I'll just
13 close with that.

14 He didn't mention, Buddy, that both of those kids
15 were adopted by him and his former wife. Not that you can't
16 adopt someone and make horrible decisions in your life, but
17 it's not going to be the mark of his existence on this planet.
18 And my hat is off to anyone who can adopt one child, much less
19 two. They were both six months old. Adopted the little girl
20 first -- pardon me -- the little boy first and then six years
21 later adopted the little girl, who were in need, who did not
22 want to be needed by their parents, like a lot of little
23 innocent children. And Buddy stepped in. And that involves a
24 lot, but it involves love.

25 So that is a selfless act despite of where he is

1 right now. And he'll get back on the road when he gets out of
2 however long he's going to continue being in confinement.

3 But it does say a lot when -- I spoke to him again
4 this morning. I said, "Have you decided where you want to ask
5 Judge to make a recommendation? Because before we were talking
6 about Springfield. It's a medical facility as well. You know,
7 you can get some treatment there. And you've got guarantees in
8 Springfield, because you've got Beverly and you've got your
9 mom. At least Beverly can drive over and fill you in on your
10 mother's health. But you've got nothing at Seagoville except
11 the hope that your daughter and son, you might be able to
12 rekindle this thing, you know, before you get out."

13 And we -- Keith and Johnny and I, we spent some time
14 trying to do this. It's important. And that's life. And
15 Buddy caused all those pains with those kids.

16 But when you're measuring somebody and sizing them
17 up, in determining a fair and appropriate sentence under the
18 3553(a) factors, despite all of this evidence, I do think it's
19 important for the Court to understand that and what he's trying
20 to do to mend all the things that he completely broke by
21 himself.

22 And that's all we have, Your Honor.

23 THE COURT: All right. Government? Mr. Kneller,
24 formerly Mr. Fenton.

25 MR. KNELLER: Now Mr. Kneller, Your Honor.

1 Your Honor, I would like to take a moment to talk to
2 the Court about what Mr. Barnes has actually done in his role
3 with the company.

4 THE COURT: Okay.

5 MR. KNELLER: It's been suggested that perhaps his
6 role is more passive and it was just related to the money, but
7 that's just not the case, Your Honor. He took a hands-on role
8 with Mr. Comu in promoting the fraud to investors as part of
9 the scheme to steal the investors' money. This is extensive.

10 Prior to Mr. Barnes joining the conspiracy, the FDA
11 and the Texas Department of Health reached out to the bottling
12 company and said, "You can't send this bottling -- these
13 shipments out with all these claims on your website." Those
14 claims included serious concerns from the FDA about
15 unsubstantiated claims regarding numerous health treatments,
16 including reducing blood pressure, healing burns, treating open
17 wounds, having anti-microbial and fungicide properties.

18 The company was on notice that it couldn't make these
19 unsubstantiated health claims. But when Mr. Barnes was
20 involved with Mr. Comu, they ignored all that.

21 What are some of the things that they told investors?
22 Well, Mr. Barnes promoted with Mr. Comu an event for investors
23 that Mr. Barnes in Exhibit 7 writes an email. He says, "We
24 should call it the fountain of youth, the miracle of minerals,
25 where we have the scientist Dr. Norbert Chirase present on the

1 health benefits of this product."

2 Exhibit 8 of the Government's submission, Mr. Barnes
3 brags to Mr. Comu how he's promoting an article that lists
4 numerous health benefits, such as that these minerals that are
5 in their water have 100 percent success rate of preventing
6 tumors, it treats normally incurable hemorrhagic fever. It's a
7 powerful anti-aging therapy.

8 Exhibits 9 and -- Exhibits 9 and 10 --

9 THE COURT: So I'm assuming you're going to go
10 through some more of these.

11 what he did was, he pushed these qualities of this
12 product that were unproven and said, "This is what we ought to
13 say, it's this and that and this and that"?

14 MR. KNELLER: Yes, Your Honor. And just as it went
15 on, Mr. Barnes' role in it became more and more involved, and
16 it became more outlandish.

17 I won't go through all of them for the Court, but
18 just to point out, Mr. Barnes and Mr. Comu were sending out
19 testimonials about how the water was used and cured a patient
20 of leukemia.

21 Mr. Barnes' knowledge of the fraud was extensive. He
22 was the one who cut the checks for 50 percent to the stock
23 promoters. He's the one that signed the checks. He was the
24 one that was helping promote the outlandish claims about
25 leukemia cures, about there was an 80-million-year-old mineral

1 well that they -- in a secret location that they found these
2 minerals that they put in their water. Mr. Barnes knew that
3 that's not the case. He knew that the minerals were bought
4 from Dr. Chirase, who was here at Mr. Comu's sentencing
5 hearing, who has a -- he has a company in Amarillo. That's
6 where they got the minerals, not from the 80-million-year-old
7 secret mine that they claimed in materials, that Mr. Barnes
8 edited and drafted and submitted.

9 His role in the entire project was extensive, going
10 back to 2015, when he was appointed interim CFO of the company.

11 He was there during the course of time when the
12 company raised more than \$10 million from investor funds based
13 on these lies, stealing investor funds, giving 50 percent to
14 the stock promoters and not using the money as they claim that
15 they were to investors.

16 2019, the Government indicted Mr. Barnes. And what
17 did he do? Immediately upon getting out of pretrial release,
18 he entered into a conspiracy with his girlfriend, Beth DeGroot.
19 She got him a new cell phone. They created new email
20 addresses. And they immediately began reaching out to existing
21 investors who Mr. Barnes knew had already invested hundreds of
22 thousands of dollars based on a fraud to try and convince them
23 to invest more money to create a new shell company that would
24 then sell the product and continue the fraud.

25 Mr. Barnes knew the product was a fraud. He knew

1 that the setup of the company was a fraud. And he was
2 instrumental in perpetrating the fraud. And when he was
3 caught, he tried to double-down. He tried to do it again. He
4 made numerous lies in order to get the payroll company to pay
5 him and Ms. DeGroot payroll after the company had shuttered.

6 Mr. Barnes still today cannot admit his role or his
7 culpability in this extensive scheme where he was responsible
8 or instrumental in extracting more than \$10 million from
9 vulnerable, elderly victims who he knew were being targeted
10 again and again through this extensive plan that he and
11 Mr. Comu perpetuated.

12 And, Your Honor, it's for those reasons and
13 Mr. Barnes' continued activities, his knowledge of the fraud,
14 that we think distinguishes him from Mr. Price. Mr. Price was
15 not involved after he was indicted in continuing to perpetuate
16 the fraud.

17 And for those reasons, we believe that 108 to 120
18 months is an appropriate sentence for Mr. Barnes.

19 THE COURT: Thank you.

20 Anything else, Mr. Skipper?

21 MR. SKIPPER: Your Honor, just to counter what the
22 Government keeps harping on with these sentencing memorandum
23 exhibits, the first five or six, they don't have Buddy's name
24 on there. It's with Mervyn Price and C.J. Comu, before Buddy
25 even entered into this group conspiracy.

1 This push by Mr. Fenton and his able colleague here
2 today that keeps talking about Barnes and Comu sent out false
3 testimonials is just simply not true. Their own exhibits
4 completely say the opposite.

5 This Exhibit Number 9, I believe, Mr. Kneller keeps
6 referring to, it's an email C.J. presumably now writes to
7 himself. They're saying this is some false person saying the
8 health benefits of this. And then C.J. sends it to Buddy. And
9 C.J. says, "Below is the format of what I sent to a very VIP
10 list." Unless I have not received something yet from the
11 Government where Buddy is forwarding this on to someone else.

12 Buddy believed in it, okay? It's black water.
13 It's -- I've tried it. It doesn't look very palatable. It is
14 what it is.

15 But he's not pushing out what C.J. Comu is telling
16 him. He's relying on C.J. Comu. Much like C.J. Comu didn't
17 say, "Hey, Buddy, by the way, I've already been stripped down
18 by the SEC. I've already had an injunction issued on me by the
19 State of Wisconsin Board of Securities."

20 There are differences.

21 Mervyn Price knew these things. And he knew, Mervyn
22 Price, that the product was a fraud.

23 These -- the very emails the Government wants this
24 Court to rely on to smack Buddy substantiates this.

25 The emails here -- Mervyn Price is talking about,

1 "whoa, let's not -- let's make sure these documents don't
2 really show the snake oil." He uses that term. Buddy never
3 uses those terms when he joins. He's promoting the product.

4 He kept it. Is that something that a guy thinks that
5 he's pushing this fake black water if he keeps it and eats the
6 \$250,000.00 worth of stock? No. Mervyn Price did it. He did
7 it knowingly, and he pushed the fraud.

8 There are differences. And, again, the Government
9 does not want to acknowledge that their very exhibits establish
10 that.

11 Thank you.

12 THE COURT: Mr. Kneller?

13 MR. KNELLER: I'll be very brief, Your Honor.

14 Counsel just directed the Court to Exhibit 9 and
15 suggesting that it was Comu who drafted these materials about
16 leukemia.

17 Exhibit 10 is an email going out to investors in
18 which Mr. Comu and Mr. Barnes are copied that has the
19 testimonial about leukemia in it. Mr. Barnes knew. Mr. Barnes
20 knew that these materials were being sent to investors.

21 And with respect to his role, in Exhibit 18, Buddy
22 Barnes is responding to an investor who is inquiring why the
23 company has now changed course in 2018 to promote a multilevel
24 marketing scheme instead of what had been told to the investor,
25 the IPO, or the buyout, which is how they would make the money.

1 Mr. Barnes perpetuates the lie that there's still an IPO or a
2 buyout on the horizon.

3 And what is the investor reaching out to Mr. Barnes
4 about? It's about the memo to shareholders about this change
5 in the strategy of the company.

6 And what is Mr. Barnes and Mr. Comu saying in this
7 memo? They're saying that we're launching on April 4th --
8 April 14, 2018, our new program. Why? Because in scripture,
9 John 4:14, our launch date, April -- 4-14, tells us, "But
10 whoever drinks the water I give them will never thirst.
11 Indeed, the water I give them will become in them a spring of
12 water welling up to internal life."

13 That's their pitch to why they're selling this
14 water -- why their launch date is on April 14th. That is now
15 the signature line of Mr. Barnes' emails from that date
16 forward, as in Exhibit 18.

17 Mr. Barnes was involved with this fraud, and he was
18 lockstep with Mr. Comu in perpetuating those lies.

19 THE COURT: Okay. Anything else?

20 MR. SKIPPER: He was involved in the fraud, Your
21 Honor. That's why we're here. He pled guilty to kicking out
22 50 percent. He wasn't involved in what the Government's theory
23 is and what this Court said over and over again about pushing a
24 dirty product. He relied on the man who testified here in this
25 court in front of C.J. Comu at his sentencing hearing. He

1 relied on what C.J. Comu was emailing.

2 This email, again, it's -- Your Honor, they submitted
3 these documents, and he's representing to you that Buddy Barnes
4 sent this email out. It's sent -- Exhibit 10, unless we want
5 to go to Exhibit 11, from Chhitiz -- Chhitiz something Basnet.
6 And Buddy is copied on that.

7 He has no reason -- C.J. Comu tells him, yeah, this
8 is working. He drinks this stuff.

9 He's not indicted for pushing nor did he plead guilty
10 of fraudulent product. And the Court knows that. We're here
11 for doing something completely noncomplex and unsophisticated
12 but for the 10 percent material misrepresentation and these
13 guys being thieves, taking either \$1.00 or \$12 million. That
14 was a lie. But now we're back on the black water. And those
15 are two different things. And Mervyn Price was much more
16 involved. He was a much thicker spoke in this wheel than Buddy
17 Barnes.

18 And that's all. I'll sit down, Your Honor.

19 THE COURT: Okay. Mr. Kneller, anything else?

20 MR. KNELLER: Nothing further, Your Honor.

21 THE COURT: Okay. All right. So I'm considering
22 where I sentenced the other individuals, looking at the
23 guidelines and the factors of 3553(a), and considering what
24 I've heard today and from everybody involved, and it is the
25 judgment of the Court you be sentenced to the custody of the

1 United States Bureau of Prisons for a term of 70 months.

2 I'm going to give you credit for the time you've
3 served.

4 I'll recommend -- Missouri?

5 MR. SKIPPER: I'm sorry, Your Honor.

6 (Counsel consults with Defendant)

7 MR. SKIPPER: He would request Seagoville, Your
8 Honor.

9 THE COURT: All right. Then I'll put down
10 Seagoville. If you change your mind, let me know.

11 And you'll need to be on supervised release.

12 And you'll need to pay the restitution of the \$10
13 million amount that I mentioned earlier.

14 And this is -- this is on all counts.

15 I'm not ordering a fine, only because I would rather
16 you pay the restitution. And we're taking that money you've
17 already surrendered for that.

18 You'll need to pay -- your special assessment is
19 \$2,200.00 over the 22 counts, \$100.00 for each count.

20 And your supervised release will be for two years on
21 all those counts, and they will run concurrently.

22 And I adopt the terms of supervision set forth in
23 Miscellaneous Order 64 and outlined in Part G of the
24 presentence report except as modified or supplemented by any
25 facts set forth in any addendum and any facts found by the

1 Court during this hearing. And you shall comply with these
2 conditions during the term of supervision.

3 I do dismiss -- oh, and I did take into account the
4 letters that I had in support -- let's see -- the original
5 indictment as to you.

6 I think that's it.

7 Let's see. Is there anything else from the
8 Government, Mr. Kneller?

9 MR. KNELLER: Nothing else from the Government, Your
10 Honor.

11 THE COURT: Anything from you, Mr. Skipper?

12 MR. SKIPPER: No, Your Honor. Thank you.

13 THE COURT: Okay. Off the record.

14 (Discussion off the record)

15 (Hearing adjourned)

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1 I, TODD ANDERSON, United States Court Reporter for the
2 United States District Court in and for the Northern District
3 of Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 3rd day of March, 2023.

7
8
9 /s/Todd Anderson

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